

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,)
) No. 2:08-CV-00676-RSM
Plaintiff,)
)
v.) CONSENT DECREE
)
)
AMERICAN STEEL, L.L.C.,)
)
Defendant.)
)

WHEREAS, Plaintiff Puget Soundkeeper Alliance filed a Complaint against Defendant American Steel, L.L.C., on April 30, 2008 alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Defendant's facility located in Kent, Washington, seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs;

WHEREAS, Defendant denies Plaintiff's claims and any liability for the alleged violations; and

WHEREAS, counsel for the parties to this action have engaged in discussions relating to the potential settlement of this litigation, which discussions have included an assessment of the

1 facts surrounding the alleged violations; and

2 WHEREAS, Defendant has undertaken, and is implementing, measures to further ensure
3 compliance with the Clean Water Act at its facility and to address issues raised in the notice of
4 intent to sue served by Plaintiff; and

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6 WHEREAS, Plaintiff and Defendant agree that settlement of these matters is in the best
7 interest of the parties and the public, and that entry of this Consent Decree without additional
8 litigation is the most appropriate means of resolving these actions; and

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10 WHEREAS, Plaintiff and Defendant, by their authorized counsel and without trial or final
11 adjudication of the issues of fact or law, with respect to Plaintiff's claims or allegations, consent to
12 the entry of this Consent Decree in order to avoid the risks of litigation and to resolve the
13 controversy between them.

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15 NOW THEREFORE, without trial of any issue of fact or law, and without admission by
16 the Defendant of the facts or violations alleged in the Complaint, and upon consent of the parties,
17 and upon consideration of the mutual promises herein contained, it is hereby

18 ORDERED, ADJUDGED AND DECREED as follows:

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20 1. This Court has jurisdiction over the parties and subject matter of this action;
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22 2. The undersigned representative for each party certifies that he or she is fully
23 authorized by the party or parties whom he or she represents to enter into the terms and
24 conditions of this Consent Decree and to legally bind the party or parties and their successors in
25 interest to it.
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27 3. This Consent Decree shall apply to, and be binding upon, the parties, and upon the
28 successors and assigns of the parties.

1 4. This Consent Decree shall apply to Defendant's operation and/or oversight of its
2 facility located at or about 19022 80th Avenue South, Kent, Washington 98032 (the "facility").

3 5. This Consent Decree constitutes a full and complete settlement of the claims
4 alleged in the Complaint and all other claims known and unknown existing as of the date of entry
5 of this Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-
6 1387, relating to the facility identified in paragraph 4 of this Consent Decree.

7 6. This Consent Decree shall not constitute evidence in any proceeding, an admission
8 or adjudication with respect to any allegation of the Complaint, any fact or conclusion of law with
9 respect to any matter alleged in or arising out of the Complaint, or the admission or evidence of
10 any wrongdoing or misconduct on the part of the Defendant or its successor.

11 7. In full and complete satisfaction of the claims covered by the Complaint and all
12 other claims covered by this Consent Decree, as described in Paragraph 5, Defendant agrees to
13 abide by and be subject to the following terms and conditions:

14 a. Defendant shall comply fully with all conditions of its National Pollutant
15 Discharge Elimination System Permit No. SO3-001948 and any successor, modified, or
16 replacement permit (the "NPDES permit");

17 b. Defendant shall, for a period of three years beginning on the date that this
18 Consent Decree is entered by the Court, forward copies to Plaintiff of all written or electronic
19 communications between Defendant and the Washington Department of Ecology concerning
20 Defendant's compliance with the NPDES permit and the Clean Water Act, including but not
21 limited to Discharge Monitoring Reports, Level One, Two, or Three response reports or similar
22 adaptive management reports, correspondence, and inspection reports. During this same period
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1 Defendant shall additionally forward copies to Plaintiff of all inspection reports and checklists of
2 all visual monitoring conducted at the facility pursuant to the NPDES permit. All copies shall be
3 forwarded to Plaintiff on a quarterly basis and not later than the twentieth day following the end
4 of each calendar quarter;

5
6 c. As soon as practicable but no later than July 15, 2009, Defendant shall
7 have all portions of the roof at the facility that are eroded such that galvanized metal is exposed to
8 stormwater coated with a material that will prevent stormwater from coming into contact with
9 galvanized metal;

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11 d. If, after Defendant coats the roof as required under sup-paragraph 7.c of
12 this Consent Decree, a stormwater sample collected at the facility under the terms of the NPDES
13 permit exceeds the action level set in the NPDES permit for total zinc, Defendant shall retain a
14 qualified professional to prepare a Level Three Source Control Report (the "Report"), as defined
15 in Condition S4.C of NPDES Permit effective on the date the Complaint was filed. The Report
16 shall identify all potential sources of stormwater contamination at the facility, and shall evaluate
17 the effectiveness and costs of all available options of source control, operational control and
18 stormwater treatment best management practices expected to reduce the concentration of
19 contaminants in the stormwater discharges at the facility to or below the benchmarks set in the
20 NPDES Permit effective on the date the Complaint was filed. The Report shall select which
21 additional source control, operational control, and stormwater treatment best management
22 practices Defendant will implement, and propose a schedule for the implementation of each
23 additional measure. The Report shall specifically include a schedule for the implementation and
24 maintenance of additional stormwater treatment best management practices that Defendant shall
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1 comply with unless Defendant applies to the Department of Ecology for a waiver pursuant to the
2 terms of the NPDES Permit of the requirement to employ stormwater treatment best management
3 practices as part of a Level Three Response and the Department of Ecology grants the waiver
4 request. All additional source control, operational control, and stormwater treatment best
5 management practices, including the stormwater treatment system, shall be fully implemented and
6 installed not later than one hundred and eighty (180) days after the Report is finalized. The
7 Report shall be finalized within ninety (90) days of Defendant's receipt of the stormwater
8 sampling analytical results that trigger the requirement of this sub-paragraph 7.d to prepare the
9 Report. Defendant shall submit the Report to the Washington Department of Ecology, with a
10 copy provided to Plaintiff, at the time it is finalized. Defendant shall fully implement the
11 additional best management practices selected in the Report in accordance with the schedule
12 proposed therein. Defendant may, in its sole discretion, avoid the requirements of sub-paragraph
13 7.c of this Consent Decree by submitting a Report that meets the requirements of this sub-
14 paragraph 7.d to the Washington Department of Ecology, with a copy provided to Plaintiff, within
15 ninety (90) days of entry of this Consent Decree and by fully implementing and installing the
16 source control, operational control, and stormwater treatment best management practices
17 described in the Report, including the stormwater treatment system, within one hundred and
18 eighty (180) days of submission of the Report to the Washington Department of Ecology;

19 e. Within sixty (60) days of entry of this Consent Decree by the Court,
20 Defendant shall install and maintain lids on all receptacles at the facility that contain galvanized
21 materials and shall keep the lids closed when the receptacles are not in use;
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1 8. Not later than thirty days after the date of entry of this Consent Decree, Defendant
2 shall make two payments totaling \$35,000 (THIRTY FIVE THOUSAND DOLLARS) for the
3 projects described in Attachments A and B to this Consent Decree. Both payments shall be made
4 by check payable and shall bear the notation "Puget Soundkeeper Alliance v. American Steel,
5 L.L.C., Clean Water Act Settlement," with a copies provided to Plaintiff. The two payments shall
6 be made as follows:
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8 a. Payment of \$32,868 (THIRTY-TWO THOUSAND EIGHT
9 HUNDRED SIXTY-EIGHT DOLLARS) to the Mid-Puget Sound Fisheries Enhancement Group
10 for the Mill Creek Non-Native Plant Abatement and Planting Project described in Attachment A
11 to this Consent Decree. The payment shall be made payable to and mailed to Mid-Puget Sound
12 Fisheries Enhancement Group, 7400 Sand Point Way, Suite 202 N, Seattle, WA 98115, Attention
13 Troy Fields;
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16 b. Payment of \$2,132 (TWO THOUSAND ONE HUNDRED
17 THIRTY-TWO DOLLARS) to the Southern California Coastal Water Research Project for the
18 Development of Benthic Community Condition Indicators for Puget Sound Project that is
19 described in Attachment B to this Consent Decree. The payment shall be made payable to and
20 mailed to Southern California Coastal Water Research Project, 3535 Harbor Blvd., Suite 110,
21 Costa Mesa, CA 92626-1437, Attn: Stephen Weisberg;
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24 9. Within 30 days of the entry of this Consent Decree, Defendant shall pay Plaintiff's
25 reasonable attorney fees and costs in the amount of \$12,000 (TWELEVE THOUSAND
26 DOLLARS) by check payable and mailed to Smith & Lowney, PLLC, 2317 East John St.,
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1 Seattle, WA 98112, attn: Knoll Lowney, in full and complete satisfaction of any claims Plaintiff
2 may have under the Clean Water Act for fees and costs.

3 10. The Court shall retain jurisdiction over this matter and allow this case to be
4 reopened without filing fee for the purpose of enabling the parties to apply to the Court for any
5 further order that may be necessary to construe, carry out, enforce compliance and/or resolve any
6 dispute regarding the terms or conditions of this Consent Decree until termination of the Consent
7 Decree per paragraph 12. In the event of a dispute regarding implementation of, or compliance
8 with, this Consent Decree, the parties shall first attempt to informally resolve the dispute through
9 meetings between the parties by serving written notice of request for resolution to the parties and
10 their counsel of record. If no resolution is reached within thirty (30) days from the date that the
11 notice of dispute is served, the parties may resolve the dispute by filing motions with the Court.
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14 11. The parties recognize that no consent judgment can be entered in a Clean Water
15 Act suit in which the United States is not a party prior to 45 days following the receipt of a copy
16 of the proposed consent judgment by the United States Attorney General and the Administrator of
17 the United States Environment Protection Agency pursuant to 33 U.S.C. § 1365(c)(3).
18 Therefore, upon the signing of this Consent Decree by the parties, Plaintiff shall serve copies of it
19 upon the Administrator of the United States Environmental Protection Agency and the United
20 States Attorney General.
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23 12. This Consent Decree shall take effect on the date it is entered by the Court. This
24 Consent Decree shall terminate sixty (60) days following completion of all obligations under it.
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26 13. This Consent Decree may be modified only upon the written consent of the parties
27 and the approval of the Court.
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1 14. If for any reason the Court should decline to approve this Consent Decree in the
2 form presented, this Consent Decree and the settlement embodied herein shall be voidable at the
3 sole discretion of either party. The parties agree to continue negotiations in good faith in an
4 attempt to cure any objection raised by the Court to entry of this Consent Decree.
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6 15. Notifications or copies required by this Consent Decree to be made to Plaintiff
7 shall be mailed to Puget Soundkeeper Alliance, 5309 Shilshole Ave., #215, Seattle, WA 98107.
8 Notifications required by this Consent Decree to be made to Defendant shall be mailed to
9 American Steel, L.L.C., 19022 80th Avenue South, Kent, Washington 98032.
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11 Dated this 5th day of June, 2009.

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14 RICARDO S. MARTINEZ
15 UNITED STATES DISTRICT JUDGE

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17 PUGET SOUNDKEEPER ALLIANCE

18 Signature: s/ Sue Joerger

19 Title: Executive Director

20 Dated: 3/30/09

21
22 AMERICAN STEEL, L.L.C.

23 Signature: s/ Thomas A. Kraus

24 Title: V.P. / GEN'L MGR

25 Dated: 3/26/09

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